

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
SUBMITTED ON BRIEFS, January 31, 2006

**EFFIE LOUISE HAYES v. ROGER STRUTTON, BETTY STRUTTON, and
GARY E. LESTER**

**Direct Appeal from the Circuit Court for Hamilton County
No. 03-C-227 Hon. L. Marie Williams, Circuit Judge**

No. E2004-01849-COA-R3-CV - FILED FEBRUARY 28, 2006

Plaintiff's action for damages for loss of her property due to defendants' fraud was dismissed by the Trial Court on the grounds that the issues had been decided adversely to plaintiff in prior actions involving these issues. On appeal, we affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Circuit Court Affirmed.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J., joined.

Effie L. Hayes, Chattanooga, Tennessee, *pro se.*

Gary E. Lester, Chattanooga, Tennessee, for appellees.

OPINION

In this action plaintiff charged defendants with having defrauded her out of her property by intentionally falsifying records as to monies allegedly owed by plaintiff to defendants, which plaintiff asserted had been paid in full. The defendants filed a Motion to Dismiss on the grounds of *res judicata* and collateral estoppel, asserting that the issues raised by plaintiff had been decided between the parties in prior litigations. Accompanying the Motion were Judgments from the Hamilton County Sessions Court, the Hamilton County Circuit Court and the U.S. District Court, demonstrating that the issues raised in this case by plaintiff had been previously adjudicated in the

prior court actions. Responding to the Motion to Dismiss,¹ the Trial Court entered an Order finding:

. . . [t]he issues brought before this Court were litigated in 1999 in the General Sessions Court of Hamilton County under Docket No. D-441497, and Docket No. 444008. Suit also was brought in the United States District Court for the Eastern District of Tennessee at Chattanooga. The claim of common law fraud brought in Federal Court was dismissed without prejudice on jurisdictional basis. Therefore, that disposition does not constitute *res judicata*. The Suit brought in the Circuit Court of Hamilton County under Docket No. 01C-700 included the same claims brought here and were dismissed on the basis of *res judicata* because of the General Sessions Court cases pending under Docket Nos. D441497 and 444008. That decision was appealed and affirmed. . . . this Court finds the doctrine of *res judicata* bars this cause.

The Court further held:

Defendants' counsel also asks the Court to bar Ms. Hayes from filing additional lawsuits on this subject matter. On the authority of *Alton Dixon v., Nike, Inc.*, the Court ORDERS Ms. Hayes shall not file additional lawsuits arising out of this same subject matter until payment of court costs incident to her prior filings and this filing.

The plaintiff has appealed to this Court and her brief essentially consists of copies of random documents from the prior case filings and the appeal of the prior Circuit Court case.

It appears from what we can glean from this record, the property in dispute was foreclosed in 1999 by the trustee with ownership then vested in the Struttons. Subsequently, defendants filed a detainer action in the Sessions Court of Hamilton County against plaintiff, and the Court held that defendants herein had the immediate right of possession of the property. On the heels of that action, plaintiff herein brought another action in Sessions Court against the Struttons "for falsifying an installment note that was secured by deed of trust". This action was dismissed by the Sessions Court. Plaintiff herein then brought an action in the U.S. District Court against defendants which was dismissed on September 25, 2000 by U.S. District Judge Edgar, with prejudice but without prejudice on the issue relating to common law fraud. In 2001, plaintiff brought an action in Hamilton County Circuit Court, which was dismissed by the Circuit Judge based upon the doctrine of *res judicata*, and plaintiff herein appealed that dismissal to the Eastern Section of this Court, which affirmed the dismissal of the case in the Trial Court. That action essentially raised the issues sought to be litigated herein.

The Trial Court, on considering the various judgments attached to the Motion to

¹Since the Trial Court considered matters outside the pleading, the Motion was treated as a Motion for Summary Judgment. Tenn. R. Civ. P. 12.06.

Dismiss, rendered Summary Judgment pursuant to Tenn. R. Civ. P. 56, which comes to us without a presumption of correctness of the Trial Court's decision.

The record clearly establishes that all of the issues raised by the plaintiff in this case have been previously adjudicated and those judgments are final. To establish *res judicata* or collateral estoppel, a party must demonstrate that the judgment in the prior case was final and concluded the rights of the parties against whom the defense is asserted, and both cases involve the same parties and the same issues. *Roy v. Diamond*, 6 S.W.3d 783 (Tenn. Ct. App. 1999). The prior judgments in favor of defendants accompanying the Motion to Dismiss meet all the requirements for establishing *res judicata*, and we affirm the Trial Court's Judgment dismissing plaintiff's action.

Finally, plaintiff takes issue with the Trial Court's barring the filing of further actions on these issues until all costs have been paid. Plaintiff filed an Affidavit of Indigency in this case, which was approved by the Trial Judge. The Trial Court relied on *Dixon v. Nike, Inc.*, No. W2001-02 882-COA-R3-CV in prohibiting plaintiff's further filing of an action on these issues until costs are satisfied on plaintiff's prior actions. An adequate basis was shown for the Trial Court's decision, and we affirm the Trial Judge on this issue, as well.

Defendants also ask this Court to find that plaintiff's appeal is frivolous, pursuant to Tenn. Code Ann. §27-1-122. The record clearly establishes that this appeal is devoid of merit and due to this and the plaintiff's actions, we find the appeal is frivolous pursuant to the cited statute and remand for the Trial Court to assess damages in favor of defendants, pursuant to Tenn. Code Ann. §27-1-122.

We affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to Effie Louise Hayes.

HERSCHEL PICKENS FRANKS, P.J.